

Date of decision: 19/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution

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5. Whether it is to be circulated to the Civil Judge?

KANTABEN M CHAWDA

vs

THE DIRECTOR ESIC

Appearance:

MR BN RAVAL

for Petitioner

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

ORAL ORDER:

Rule. Mr.Bambbhania, learned Additional Government Pleader appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

This petition is filed by the petitioner for quashing and setting aside the orders at Annexures.A and B dt. August 1, 1995 passed by the Superintendent, Chest Disease Hospital, Ahmedabad, respondent no.2. In the said order, it was, inter alia, observed, that the petitioner was on leave without pay for the following period:

1. Dt. 16.2.1990 to 6.3.90 - 19 days.
2. Dt. 19.3.90 to 27.3.90 - 9 days.
3. Dt. 31.3.92 to 4.4.92. - 5 days.
4. Different types of leave without pay. - 230 days.

Accordingly the following amount which was paid by way of salary was paid through mistake.

1. Rs. 872.20
2. Rs. 385.00
3. Rs. 270.00
4. Rs.10,310.50

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Total. Rs.12,310.50 ps.

Thus, in all an amount of Rs.12,310.50 ps. was paid to the petitioner under mistake. The petitioner was, therefore, called upon to refund the said amount.

Mr.Supehia, for Mr.B.N.Raval, contended that the impugned order was passed without issuing any notice, calling for explanation or affording any opportunity of hearing. The said fact is not controverted by Mr.Bambbhania. He, however, contended that the petitioner was not entitled to salary since leave was without pay. It was due to mistake on the part of the Department that salary was paid. If there was a mistake, it could be corrected. The contention is well founded but, then, the principles of natural justice must be observed. Before such action is taken, the

authority was bound to observe the principles of natural justice and fair play. It was obligatory on the part of the respondent authority to hear the petitioner and thereafter correct the mistake if there was any. Hence, on that ground alone and without observing anything on merits, the petition is allowed. The impugned orders are hereby quashed.

It is needless to say that I am not expressing any opinion on merits and it is open to the Competent Authority to pass an order in accordance with law after observing principles of natural justice. Rule is made absolute to the above extent. In the facts and circumstances of the case, there shall be no order as to costs.

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